

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF
CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

June 23, 2006

CDUP: HA-3137

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Time Extension Request for Conservation District Use Permit (CDUP) HA-3137 for Saddle Road Improvements Section III

APPLICANT: U.S. Department of Transportation
Federal Highway Administration
Central Federal Lands Highway Division (CFLHD)

LANDOWNER: State of Hawaii
Department of Land and Natural Resource
Department of Transportation
Department of Hawaiian Homelands

LOCATION: Saddle Road, Milepost 19-27, East Hawaii

TMK: (3) 3-8-001: 7, 8, 19
(3) 2-4-008: 1, 4, 8
(3) 2-6-18: 4, 10

AREA OF USE: 189 Acres

SUBZONE: Protective/Resource

BACKGROUND:

On January 23, 2004, the Board approved CDUA HA-3137 for Saddle Road Improvements – Milepost 19-27, East Hawaii, subject to sixteen conditions. Condition 5 provided that any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources and shall be completed within four years of the Board's approval (**Exhibits 1**).

On October 21, 2005, the Department approved the request for a first time extension on the construction initiation deadline to May 23, 2006, with the deadline for completion by May 23, 2008 (**Exhibit 2**).

TIME EXTENSION REQUEST:

On June 1, 2006, the Office of Conservation and Coastal Lands (OCCL) received a correspondence stating that the CFLHD had awarded a construction contract on May 2, 2006 and that initial construction staking commenced in January 2006 (**Exhibit 3**). Staff notes, construction plans have been recently approved and implementation shall be initiated shortly. Conversations with the Saddle Road Project Manager revealed that construction might not be completed by May 23, 2008. Factors beyond the applicant's control such as the availability of asphalt in the State may affect the timeliness of completion of the project. An extension to January 27, 2009 to complete construction is proposed.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for the granting of time extensions is provided in Section 13-5-43, Hawaii Administrative Rules (HAR), which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, §13-5-43, HAR, states that: "All time extensions shall be submitted to the department thirty days before the expiration deadline. If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the Board for review."

Further, Section 13-5-43, HAR provides that time extensions may be granted by the Board upon the second or subsequent request for a time extension, based on supportive documentation from the applicant.

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

DISCUSSION:

In the present case, none of these factors suggest any reason to deny the requested time extension. The Permittee has submitted all the required documents to obtain permits and approvals to initiate project construction. Approval of the time extension request will

hopefully provide the additional time needed to complete the Section III Saddle Road Improvements.

Staff, therefore, has the following:

RECOMMENDATION:

That the Board of Land and Natural Resources **APPROVE** an extension to January 27, 2009 to complete construction of Section III (Milepost 19 to 27) of the Saddle Road Improvement project, subject to the following conditions:

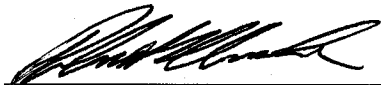
1. That condition 5 of CDUA HA-3137 is amended to provide that the Permittee has until January 27, 2009 to complete construction of Section III (Milepost 19 to 27) of the Saddle Road Improvement project; and
2. That all other conditions imposed by the Board under CDUP HA-3137, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

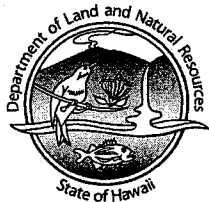
LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Ref.:OCCL:SL

JAN 27 2004

Mr. Larry C. Smith
U.S. Dept. Of Transportation
Federal Highways Administration
Central Federal Lands Highway Division
555 Zang St., Room 259
Lakewood, Co 80228

Dear Mr. Smith:

This is to inform you that on January 23, 2004, the Board of Land and Natural Resources (BLNR) APPROVED your application for the Saddle Road Improvements – Milepost 19-27, at East Hawaii, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

EXHIBIT 1

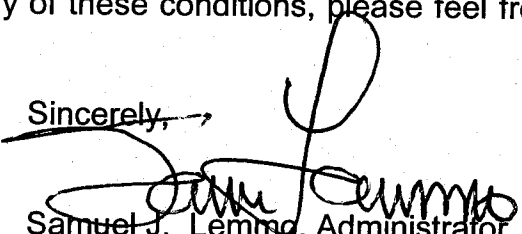
5. Any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources; further, all work and construction must be completed within four years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. All mitigation measures set forth in the application materials and in the Final Environmental Impact Statement for this project, including but not limited to:
 - Implementation of the fire prevention and other environmental commitments identified in the EIS;
 - Work directly with DOFAW to ensure that all existing pull-outs and access ways to hunting areas and trails are either maintained or improved. If due to highway design standards, an existing pull-out, access or road must be eliminated, Federal Highways must work directly with DOFAW or the affected entity to ensure that an acceptable alternative pull-out, access or road is provided in its place;
 - Implementation of visual impact mitigation measures identified in the EIS;
 - Implementation of mitigation measures required by USFWS;
 - Implementation of all mitigation measures identified in the EIS for the protection of endemic flora and fauna;
8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
10. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
11. In issuing this permit, the Department of Land and Natural Resources and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department of Land and Natural Resources may, in addition, institute appropriate legal proceedings;

12. The applicant shall complete all archaeological mitigation work stipulated by the State Historic Preservation Division and the EIS for the project, for road work proposed under this permit, prior to the approval of final construction plans;
13. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
14. The applicant shall replant or cover bare areas as soon as grading or construction are completed. New plantings may require soil amendments and fertilizers to become established;
15. Other terms and conditions as may be prescribed by the Chairperson; and
16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Please acknowledge receipt of this approval with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact me at 587-0381.

Sincerely,


Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

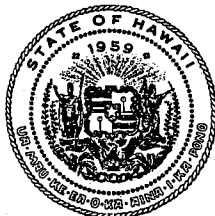

Applicant's Signature

Date

2/6/04

cc: Chairman
Hawaii Board Member
Hawaii Land Agent
DOCARE/HPD/DAR/DOFAW
County of Hawaii Planning Department
Okahara & Associates, Inc.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:CP

File No.: HA-3137B

OCT 21 2005

David H. Gedeon, P.E.
Central Federal Lands Highway Division
U.S. Department of Transportation
12300 W. Dakota Ave., #380
Lakewood, CO 80228

Dear Mr. Gedeon,

Subject: Time Extension to Initiate and Complete Saddle Road Improvements, Conservation District Use Application (CDUA) HA-3137

The Department of Land and Natural Resources (DLNR) Office of Conservation and Coastal Lands (OCCL) is in receipt of your letter dated October 12, 2005 requesting a time extension to initiate and complete improvements to Saddle Road located on parcels TMK: (3) 2-4-008:001, 004, 008 and (3) 2-6-018:001, 010 on the Island of Hawaii (Exhibit A).

According to your information, CDUA HA-3137 was approved on January 23, 2004 for improvements to a portion of Saddle Road that lies within the Conservation District. Condition #5 of that CDUA states that "any work or construction to be done on the land shall be initiated within two years of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources; further, all work and construction must be completed within four years of the approval." However, construction to the portion of Saddle Road that is within the Conservation District is not expected to begin until spring of 2006.

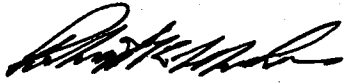
We understand that lengthy projects such as the Saddle Road improvements often encounter unforeseen delays, and that the time extension is requesting only a few additional months to begin and complete construction. This is also your first request for an extension. Therefore, your request for additional time to begin and end the Saddle Road improvements within the Conservation District is approved pursuant to Hawaii Administrative Rules (HAR) 13-5-43(b). The new deadline to begin improvements to Saddle Road within the Conservation District is **May 23, 2006** and the deadline to complete improvements is **May 23, 2008**. Please note that additional time extensions will require approval from the Board of Land and Natural Resources (HAR 13-5-43(c)).

Please acknowledge receipt of this letter, with the above specified new deadline. Please sign two copies. Retain one copy for your records and return one copy within thirty (30) days.

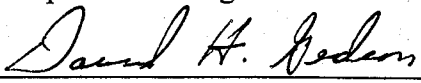
EXHIBIT 2

Should you have any questions on any of these conditions, please feel free to contact Chris Pramoulmetar of the Office of Conservation and Coastal Lands at 587-0048.

Aloha,


PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

Receipt acknowledged:


Applicant's Signature
Date 10-26-05

cc: Hawaii District Land Agent
Hawaii County Planning Department



U.S. Department
of Transportation

**Federal Highway
Administration**

Time Extension

Central Federal Lands Highway Division

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

CDUA: HA-3137

12300 West Dakota Avenue
Lakewood, CO 80228

2006 JUN -1 A 10:46

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

May 23, 2006

Refer To: HFPM-16

Mr. Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Lemmo:

Subject: Conservation District Use Permit, CDUA HA-3137
Notification of Start of Construction

The Federal Highway Administration - Central Federal Lands Highway Division (CFLHD), in cooperation with the Hawaii Department of Transportation (HDOT), is proposing to improve the Saddle Road in the County of Hawaii from milepost 6 to its intersection with State Route 190, Mamalahoa Highway (milepost 53.5). The Saddle Road Improvement Project within Section III (milepost 9 to 28) as defined in the Final Environmental Impact Statement is being funded with Federal-aid funds provided by the Hawaii Department of Transportation.

As part of our project development efforts for Section III of Saddle Road, CFLHD submitted a Conservation District Use Application (CDUA HA-3137) to the Board of Land and Natural Resources in 2003, which was on January 23, 2004. Condition #5 of this permit stipulated that construction must begin within two years of the date of issuance and that all work be completed within four years of that date. We subsequently requested and were granted an extension of these dates to May 23, 2006 and May 23, 2008, respectively. The purpose of this letter is to formally notify you that CFLHD awarded a construction contract on May 2, 2006 for work within the limits of CDUA HA-3137. Award of this contract is a contractual obligation on the part of the Federal government, thus constitutes the official start of construction. Initial construction staking commenced in January of this year. We believe contract award and this initial survey work satisfy HA-3137 condition #5 for Section III of the Saddle Road Improvement Project.




EXHIBIT 3



If additional information is needed, or if you have any questions regarding the above information, please contact me at (720) 963-3723.

Sincerely,



 David H. Gedeon, P.E.
Saddle Road Project Manager